

## DEPARTMENT OF THE TREASURY INTERNAL REVENUE SERVICE WASHINGTON, D.C. 20224

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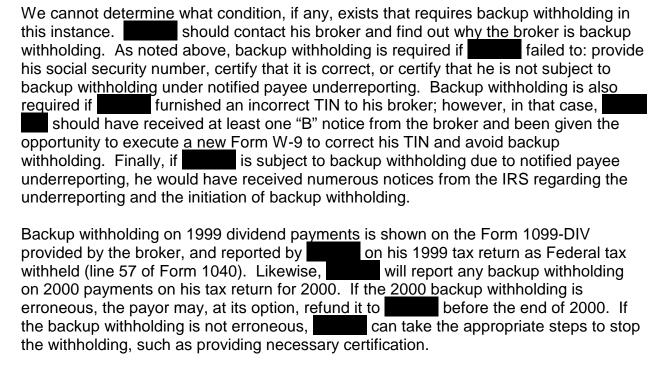
The Honorable Bob Goodlatte Member, U.S. House of Representatives 10 Franklin Road, S.E. Suite 540 Roanoke, VA 24011-2121

Dear Congressman Goodlatte:

his letter re <u>sponds to your inquiry dat</u> ed January 31, 2000, on behalf of your	
onstituent, questions why his broker withheld a "TEFRA"	
on a cash dividend of \$ stated that this tax has been	
vithheld since last Fall.	
from the information provided, it appears that some 's broker has withheld 31 percentages."	ent
f dividend payments as backup withholding. Under § 3406(a)(1) of the Internal	
Revenue Code (the Code), backup withholding is required on dividends in four	
ituations, briefly described below:	

- The payee does not furnish his taxpayer identification number (TIN) to the payor and certify under penalties of perjury that the TIN furnished is correct.
  Certification is not required if the account was opened prior to 1984. See §§ 3406(a)(1)(A) and 3406(e)(1) of the Code and § 31.3406(d)-1 of the Employment Tax Regulations.
- The Internal Revenue Service (IRS) notifies the payor that the TIN furnished by the payee is incorrect. The payor sends "B" notices to the payee after notices of incorrect TIN are received from the IRS. After the first IRS notice, the payor sends the first "B" notice, and the payee has 30 days to provide a Form W-9 certifying to his correct TIN. The payor must begin backup withholding if the Form W-9 is not returned within the 30-day period. If the payor receives a second IRS notice of incorrect TIN within a three year period, the payor must send a second "B" notice to the payee. The payor must begin backup withholding after 30 days and continue until the payor receives notice of the payee's correct TIN from the Social Security Administration or the IRS. See §§ 3406(a)(1)(B) and 3406(h) of the Code and § 31.3406(d)-5(d) of the Regulations.

- There is notified payee underreporting. Notified payee underreporting occurs when (1) the IRS has determined that a payee failed to report reportable interest or dividends on his income tax return, or failed to file a return on which interest or dividends should have been reported; (2) the IRS has sent at least four notices to the payee (over a period of at least 120 days) regarding the underreporting; and (3) the IRS has assessed a deficiency in tax attributable to the underreporting. The IRS then notifies the payee and his payors that the payee is subject to backup withholding due to notified payee underreporting. See §§ 3406(a)(1)(C) and 3406(c) of the Code and §31. 3406(c)-1 of the Regulations.
- The payee fails to certify that he is not subject to backup withholding due to notified payee underreporting. This rule does not apply to accounts opened prior to 1984. See § 3406(a)(1)(D) of the Code and § 31.3406(d)-2 of the Regulations.



The designation of the backup withholding as "TEFRA tax" on the brokerage statement is inaccurate. The broker may have done this because prior to the enactment of the current backup withholding provision, a statute requiring withholding on all interest and dividend payments was enacted as part of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). That provision was later repealed and replaced by backup withholding.

I hope this information is helpful. Please contact me or Nancy Rose at (202) 622-4910 if we may be of further assistance.

Sincerely,

George J. Blaine Chief, Branch 1 Income Tax & Accounting Division